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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/633,195 | 08/01/2003 | Charles Foster | FO-03-01 | 3164 |
| 27408 | 7590 | 12/06/2004 | | |
| LAW OFFICE OF DAVID L. TINGEY 321 BURNETT AVE. S., STE 303 RENTON, WA 98055 | | | EXAMINER | ROWAN, KURT C |
| | | | ART UNIT | PAPER NUMBER |
| | | | | 3643 |

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|------------------|-----------|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/633,195 | FOSTER, CHARLES | |
| | Examiner Kurt Rowan | Art Unit 3643 | <i>My</i> |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 September 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Latulip.

The patent to Latulip shows a fishing rod with sections **A, C** having a ferrule **B**. The ferrule has a tubular body with openings at tubular first and second ends as shown in Figs. 1-2. The ends are adapted to receive joining ends of the first and second fishing rod sections with the tubular body first end affixed to the first fishing rod section joining end. Latulip shows a pliant mildly adhesive liner in column 1, lines 35 to column 2, line 78 noting the gelatin forms a layer on the inside of the ferrule that the rod sections are then inserted into. The adhesive is adapted to releasably engage the fishing rod second section end received therein such that the fishing rod second section is retained in the tubular body second end by the pliant mildly adhesive liner until removed under pulling force of a user. Inherently the body is resiliently flexible with stiffness approximately equal to the fishing rod section.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemper.

The patent to Kemper shows a ferrule having a tubular body 30 with openings at first and second tubular ends. The openings are adapted to receive joining ends of first 18 and second 22 rod sections. Kemper shows a pliant mildly adhesive liner 58 secured inside the tubular body second end that is adapted to releasably engage the rod section. In reference to claim 1, Kemper does not disclose if the adhesive liner releasably grasps the second section, but at any rate, it would have been obvious to grasp the second section in a releasable manner so that the apparatus could be taken apart for portability. Further, it would have also been obvious to employ the teachings of Kemper to other axial objects since as fishing rods

5. Claims 5, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latulip as applied to claim 4 above, and further in view of Richardson.

The patents to Latulip and Richardson show fishing rods. Latulip has been discussed above and does not show a nonsmooth outer surface on the second end section. Richardson shows two fishing rod sections 10, 11 that mount into ferrule 13 as shown in Figs. 1-5. Richardson shows the rod sections having a six-sided circumference with three flat sections on each side of the rod which constitutes a nonsmooth outer surface. In reference to claim 5, it would have been obvious to provide Latulip with a nonsmooth outer surface as shown by Richardson since merely one rod type is being substituted

for another and the function is the same. In reference to claim 11, Latulip and Richardson show fishing rods having the same cross-sectional area. Richardson shows a plurality of equal length lines on the end of the ferrule as shown in Figs. 3-4. At any rate, it would have been obvious to employ rod sections of different diameters to change the action of the rod noting that changes in size are obvious. See *In re Rose*, 105 USPQ 137. In reference to claims 12-13, Latulip and Richardson show circular openings, but it would have been obvious to employ other shapes such as pentagonal or octagonal since changes in shape are obvious. See *In re Dailey et al.*, 149 USPQ 47. In reference to claim 14, Latulip shows a circular cross-section of the first section.

6. Claims 5-8, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latulip as applied to claim 4 above, and further in view of Kemper. The patents to Latulip and Kemper have been discussed above. In reference to claim 5, Latulip does not show a nonsmooth outer surface. The patent to Kemper shows a coupling between two pipe (rod) sections that shows a nonsmooth outer surface 48 on the second section 22. It would have been obvious to provide Latulip with a nonsmooth outer surface as shown by Kemper for the purpose of providing a stronger connection due an increase in the surface area of the second section end. In reference to claims 6-7, Kemper shows an annular ridge on the circumference of the second end section, but it would have been obvious to employ a line wrapped in a plurality of turns around the second section end since the function is the same and no stated problem is solved.

In reference to claim 10, Kemper shows a nonsmooth surface with adhesive 58 in Fig.

2.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Latulip as applied to claim 4 above, and further in view of Mull.

The patents to Latulip and Richardson have been discussed above and show fishing rod having the same cross-section. The patent to Mull shows a ferrule joining a fishing rod having two different cross-sections. In reference to claim 11, it would have been obvious to provide the rod and ferrule as shown by Latulip with a rod having different cross-sections since merely one fishing rod is being substituted for another and the function is the same.

Response to Arguments

8. Applicant's arguments filed September 16, 2004 have been fully considered but they are not persuasive. Applicant argues that Kemper does not disclose a liner ferrule that is mildly adhesive. However, it is not clear what is mildly adhesive and what is not ? The specification is silent on this point and does not even disclose what adhesive is being used. Hence one can not infer that the properties of the adhesives are different. It appears that applicant is arguing a method of assembly. While the prior art to Kemper does not disclose if the member can be released from the ferrule, it does not state that a permanent connection is made. The adhesive of Kemper appears to be a lining that resiliently conforms to a non-smooth surface of the member as shown in Fig. 2. The process used to Latulip to make the ferrule would result in adhesive on the inside surface. As to the stiffness, Latulip does not disclose the stiffness when

compared to the rest of the fishing rod, but if the ferrule is much stiffer a stress riser will be created which would cause the rod to break or fail at the rod- ferrule interface. Hence, it would have been obvious to employ a ferrule that has a similar flexibility to that of the fishing rod. Note that Richardson discloses a flexible ferrule in column 1, line 10. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning in regard to the combination of Latulip in view of Richardson, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant further argues that Latulip does not have a compliant liner, but the cement would form a compliant liner. The lines shown on the fishing rod of Richardson such as in Figs. 1-2 represent flat sides of a fishing rod. Since three sides are shown in the Figures which show a half of the fishing rod, the rod would be a hexagonal rod. The cutaway shown in Fig. 5 would not show this this shape since the inside half of the rod is shown. Richardson discloses that there is a tight fit between the rod sections and the ferrule, but this does not mean that the rod sections can not be separated. As to the change in shape of the tubular opening, it should be pointed out that changes in shape are obvious. See *In re Dailey et al.*, 149 USPQ 47. It appears that the ferrule of Richardson adapts to cross-sections of different sizes and shapes noting Fig. 4 of Richardson. As to Kemper showing grooves 48, also see grooves 52,

54 as shown in Fig. 2. It would have been obvious to provide grooves anywhere on the joint between the rod and the ferrule to increase the surface area which would provide a strong mechanical bond when used in conjunction with an adhesive.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR